

## **Evans Online Banking Service Agreement**

1. **Meaning of some words.** In this agreement:
  - a. "We," "us," "our" and "ours" mean Evans Bank, N.A., One Grimsby Drive, Hamburg, NY 14075 ;
  - b. "You" and "your" mean anyone who registers with us to use Evans Online Banking;
  - c. "Your deposit accounts" means all deposit accounts with us that are approved by us as accessible by you for transfers of funds through Evans Online Banking;
  - d. "Your primary account" means, if you enroll in the bill payment feature of Evans Online Banking, whichever of your deposit accounts is approved by us as the demand deposit or NOW account to be used for payments through the bill payment feature;
  - e. "Your line of credit accounts" mean all line of credit accounts with us that are approved by us as accessible by you for transfers of funds through Evans Online Banking;
  - f. "Your loan accounts" mean your line of credit accounts and all other loan accounts with us that are approved by us as accessible by you for transfers of funds through Evans Online Banking;
  - g. "The processor" means the processor that provides services to us in connection with the bill payment feature; and
  - h. "Your password" means the password temporarily assigned to you by us or subsequently chosen by you for use with Evans Online Banking.
  
2. **Computer, related equipment and software.** The installation, maintenance, operation and use of the computer, related equipment (for example, modem, telephone or other telecommunications equipment) and software you use for Evans Online Banking are your responsibility. It is your responsibility to install and periodically update virus protection software on your computer and to routinely scan your computer using an up-to-date virus protection product. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT OR TO THE EXTENT THAT APPLICABLE LAW REQUIRES A DIFFERENT STANDARD, WE WILL NOT BE RESPONSIBLE FOR ANY LIABILITY, LOSS, INJURY OR DAMAGE (WHETHER DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE) IN ANY WAY ARISING OUT OF:
  - A. **ANY ERROR IN THE INSTALLATION, MAINTENANCE, OPERATION OR USE, OR ANY CONFIGURATION PROBLEM OR INCOMPATIBILITY, OF THE COMPUTER, RELATED EQUIPMENT OR SOFTWARE;**
  - B. **ANY FAILURE OR MALFUNCTION OF THE COMPUTER, RELATED EQUIPMENT OR SOFTWARE;**
  - C. **ANY FAILURE OR MALFUNCTION OF, OR ANY COMPROMISE OF DATA SENT USING, ANY TELEPHONE, INTERNET ACCESS OR OTHER SERVICE YOU USE TO CONNECT TO EVANS ONLINE BANKING;**
  - D. **ANY VIRUS OR SIMILAR PROBLEM RESULTING FROM THE USE OF EVANS ONLINE BANKING; OR**
  - E. **ANY FEATURE OR FUNCTION OF ANY OF THE SOFTWARE THAT IS NOT INVOLVED WITH EVANS ONLINE BANKING (FOR EXAMPLE, HOME BUDGETING).**

3. **Your password.** Your password will be used to initiate orders and requests described in Sections 6, 7 and 8 through Evans Online Banking. We will assign a temporary password to you for use with Evans Online Banking, but you will be required to choose a new password for use with Evans Online Banking. You should not choose as the new password any personal identification number for any electronic banking card that can be used to obtain access to any deposit account you have with us now or in the future. You should not allow anyone else to have your password unless you authorize him or her to use Evans Online Banking in any way described in Section 6, 7 or 8. You should keep your password confidential and in a secure location separate from the computer, related equipment and software you use for Evans Online Banking. For reasons of security, the processor or we may render your password ineffective at any time and without any notice to you.

We will not be liable for damages you suffer as a result of your allowing anyone else (for example, a party that aggregates account information or content of websites) to have your password.

4. **Your responsibility for orders.** You will be responsible for and bound by each order described in Section 6, 7 or 8 that is given through Evans Online Banking by anyone else you allow to have your password or to use Evans Online Banking in any way described in Section 6, 7 or 8, and the order and each transfer of funds or payment initiated by the order will be covered by this agreement as though the order had been given by you.
5. **Features of Evans Online Banking.** Evans Online Banking has two features: an Evans Online Banking feature and a bill payment feature.
6. **Evans Online Banking feature.** Subject to the provisions of this agreement, the Evans Online Banking feature of Evans Online Banking may be used to:
  - a. Give an order to us to make an immediate non-recurring transfer of funds from any of your deposit accounts that is not a club account to any other of your deposit accounts or any of your loan accounts or from any of your line of credit accounts to any other of your loan accounts or any of your deposit accounts;
  - b. Give an order to us to make a future non-recurring transfer of funds from any of your deposit accounts that is not a club account to any other of your deposit accounts or any of your loan accounts or from any of your line of credit accounts to any other of your loan accounts or any of your deposit accounts;
  - c. Give an order to us to make a series of recurring transfers of funds of the same amount from any of your deposit accounts that is not a club account to any other of your deposit accounts or any of your loan accounts or from any of your line of credit accounts to any other of your loan accounts or any of your deposit accounts;
  - d. Give an order to us changing or canceling an order described in clause (b) of this sentence that was previously given through the Evans Online Banking feature;
  - e. Give an order to us changing or canceling as to future transfers of funds an order described in clause (c) of this sentence that was previously given through the Evans Online Banking feature; and
  - f. Request information available through the Evans Online Banking feature concerning any deposit or loan account with us that is approved by us as accessible by you for information through the Evans Online Banking feature (for

example, information concerning deposits in and withdrawals from a deposit account and the balance of the deposit account).

7. **Bill payment feature.** Subject to the provisions of this agreement, the bill payment feature of Evans Online Banking may be used to:
- a. Give an order to us to make a non-recurring payment from your primary account;
  - b. Give an order to us to make a series of recurring payments of the same amount from your primary account;
  - c. Give an order to us changing or canceling an order described in clause (a) of this sentence that was previously given through the bill payment feature;
  - d. Give an order to us canceling as to the next payment or all future payments an order described in clause (b) of this sentence that was previously given through the bill payment feature; and
  - e. Request available information concerning payments from your primary account made through the bill payment feature.

Any payment from your primary account made through the bill payment feature will be made by either an electronic transfer of funds through an automated clearing house to the payee of the payment or the sending of a check to the payee. Because the payee will not receive a payment stub with the payment and because the payee may process payments made without a payment stub at a different location than is normally the case or may take longer than is normally the case to process those payments, it may be advisable for you to verify with the payee the address to which the payment should be sent and the period of time required for the posting of the payment.

8. **Initiation, processing, charging, changing and cancellation of orders.** The following rules apply to the initiation, processing, charging, changing and cancellation of orders described in Sections 6 and 7 that are given through Evans Online Banking:
- a. If an order to make an immediate non-recurring transfer of funds is given through the Evans Online Banking feature of Evans Online Banking:
    - i. The transfer will be scheduled to be made on the day we receive the order if that day is a business day of ours and we receive the order no later than 8:00 p.m. eastern United States time that day or on our first business day after that day if that day is not a business day of ours or we receive the order after 8:00 p.m. eastern United States time that day;
    - ii. The transfer may be charged against the account from which it is to be made as early as the day we receive the order; and
    - iii. The order may not be changed or canceled.
  - b. If an order to make a future non-recurring transfer of funds is given through the Evans Online Banking feature:
    - i. The order must schedule the transfer to be made on a specified date that is not more than one year after the day we receive the order;
    - ii. The transfer will be scheduled to be made on the date the order schedules it to be made unless that date is not a business day of ours, in which case it will be scheduled to be made on our first business day after that date;
    - iii. The transfer may be charged against the account from which it is to be made as early as the date on which it is scheduled to be made; and
    - iv. The order may be changed or canceled until 7:00 a.m. eastern United States time on the date on which the transfer is scheduled to be made.

- c. If an order to make a series of recurring transfers of funds is given through the Evans Online Banking feature:
  - i. The order must provide for the transfers to be equal in amount and regular in frequency (weekly, bi-weekly, monthly or quarterly) and must schedule them to begin on a specified date after the day we receive the order;
  - ii. Each of the transfers will be scheduled to be made on the date the order schedules it to be made unless that date is not a business day of ours, in which case it will be scheduled to be made on our first business day after that date;
  - iii. Each of the transfers may be charged against the account from which it is to be made as early as the date on which it is scheduled to be made; and
  - iv. The order may be changed or canceled with respect to any of the transfers until 8:00 p.m. eastern United States time on the date on which the transfer is scheduled to be made.
- d. If an order to make a non-recurring payment is given through the bill payment feature of Evans Online Banking:
  - i. The order must provide as the payee of the payment a party that is located in the United States, is not a government entity, would not be receiving the payment under a court order and is not regarded by us as ineligible for payment through the bill payment feature;
  - ii. The order must schedule the payment to be made on a specified date after the day we receive the order;
  - iii. The order may not provide for the payment to be made in other than United States funds;
  - iv. The payment will be scheduled to be made on the date the order schedules it to be made unless that date is not a business day of ours, in which case it will be scheduled to be made on our first business day after that date;
  - v. The payment may be charged against your primary account as early as the date on which it is scheduled to be made; and
  - vi. The order may be changed or canceled until midnight eastern United States time on the day before the date on which the payment is scheduled to be made.
- e. If an order to make a series of recurring payments is given through the bill payment feature:
  - i. The order must provide for the same payee of all of the payments and must provide as the payee a party that is located in the United States, is not a government entity, would not be receiving the payments under a court order or is not regarded by us as ineligible for payment through the bill payment feature;
  - ii. The order must provide for the payments to be equal in amount and regular in frequency (weekly, bi-weekly, monthly or quarterly) and must schedule them to begin on a specified date after the day we receive the order;
  - iii. The order may not provide for any of the payments to be made in other than United States funds;
  - iv. Each of the payments will be scheduled to be made on the date the order schedules it to be made unless that date is not a business day of ours, in which case it will be scheduled to be made on our first business day after that date;

- v. Each of the payments may be charged against your payment account as early as the date on which it is scheduled to be made; and vi. The order may not be changed but may be canceled with respect to any of the payments until midnight eastern United States time on the day before the date on which the payment is scheduled to be made.

9. **Limitations and other rules applicable to transfers of funds and payments.** The following limitations and other rules apply to transfers of funds and payments initiated by orders described in Sections 6 and 7 that are given through Evans Online Banking:
- a. No transfer of funds or payment may be ordered through Evans Online Banking if you do not have an unrestricted right to withdraw funds from the account from which the transfer or payment is to be made (for example, if two or more persons are required to sign a check written on the account or a withdrawal form for the account).
  - b. Any transfer of funds or payment ordered through Evans Online Banking will be subject to the funds being available for withdrawal from the account from which the transfer or payment is to be made when the order to make the transfer or payment is to be charged against the account with respect to the transfer or payment.
  - c. Any transfer of funds from any of your line of credit accounts ordered through the Evans Online Banking feature of Evans Online Banking will be subject to the funds being available as credit under the account from which the transfer is to be made when the order to make the transfer is to be charged against the account.
  - d. If, when any order to make a transfer of funds or payment given through Evans Online Banking is to be charged with respect to the transfer or payment against the account from which the transfer or payment is to be made, the amount of the transfer or payment exceeds the amount of money available for withdrawal from the account (taking into consideration, if the account is tied to a line of credit account or other overdraft facility with us, the amount of credit available under the line of credit account or other overdraft facility), we may either make the transfer or payment, in which case you will be liable for the excess, or refuse to make the transfer or payment. In either case, you will be liable for any fee applicable to the withdrawal or attempted withdrawal of money from the account in excess of the amount of money available for withdrawal from the account. But, if we refuse to make the transfer or payment, we may, but we will not have to, attempt to make it on a later business day of ours.
  - e. If, when any order to make a transfer of funds from any of your line of credit accounts given through the Evans Online Banking feature is to be charged against the account, the amount of the transfer exceeds the amount of credit available under the account, we may either make the transfer, in which case the amount of the transfer will be considered to be credit extended under the account, or refuse to make the transfer. In either case, you will be liable for any fee applicable to the obtaining of the credit or attempted obtaining of credit in excess of the amount of credit available under the account.
  - f. For reasons of security, we may, at any time and without any notice to you, refuse to honor any order to make a transfer of funds or payment given through Evans Online Banking.
  - g. We may, at any time and without any notice to you, refuse to honor any order to make a transfer of funds or payment given through Evans Online Banking if the order reasonably appears to us to be fraudulent or erroneous.

- h. If an order to make a transfer of funds or payment given through Evans Online Banking contains an inconsistency in the name and account or other identifying number of an account or payee, financial institution or other party, we may, but we will not have to, treat the number as controlling and rely on the number in processing the order.
  - i. An order to make a series of recurring transfers of funds or payments must not be given through Evans Online Banking unless a printer or other means is available to obtain a printed copy of the authorization for the series of transfers or payments for your records.
  - j. If any of your deposit accounts is a savings account for purposes of federal reserve requirements, during any calendar month or monthly period covered by any statement for the account that we send you or otherwise make available to you, there may be no more than six transfers of funds from the account that are:
    - i. A transfer of funds to any other of your deposit accounts ordered through the Evans Online Banking feature;
    - ii. Any other computer transfer of funds to any other of your deposit accounts, any other deposit account with us or a third party;
    - iii. A preauthorized, automatic or telephonic transfer of funds to any other of your deposit accounts, any other deposit account with us or a third party;
    - iv. A transfer of funds to a third party made by using an electronic banking card (for example, a transfer of funds to pay the purchase price of goods or services); or
    - v. A transfer of funds made by using a check, a draft or any other order payable to a third party.
  - k. You will be responsible for giving any order to make a payment through the bill payment feature of Evans Online Banking in sufficient time for the order to be processed and the payment to be sent so that the payment is received by the payee of the payment by the date the payment is to become due without taking into consideration any grace period provided by the payee, and you will be responsible, and we will not be liable, for any consequence of your not doing so (for example, any finance or late charge resulting from the payment being made late). Up to five of our business days after the day we receive the order if that day is a business day of ours, or up to five of our business days after our first business day after that day if that day is not a business day of ours, will be necessary to allow for the processing of the order so that the payment is received by the payee by the date it is to become due.
  - l. We may at any time and without any notice to you, refuse to honor any order to make a payment given through the bill payment feature if, because the order identifies the same payee, payment date and amount, it appears to duplicate another order to make a payment given through the bill payment feature.
- 10. Stopping payment of transfer of funds or payment in series of recurring transfers of funds or payments.** If an order to make a series of recurring transfers of funds or payments of the same amount is given through Evans Online Banking, we may be ordered to stop the payment of any transfer or payment in the series by telephoning us at 716-926- 3313 and asking for our Customer Experience Center or writing us at Evans Bank, N.A., One Grimsby Drive, Hamburg, NY 14075 , Attention: Customer Experience Center, in time for us to receive the order to stop the transfer or payment at least three of our business days before the date on which the transfer or payment is scheduled to be made. The order will not be binding on us with respect to the transfer or payment if we do not receive it at least three of our business days before the date on which the transfer

or payment is scheduled to be made. However, even if we do not receive the order at least three of our business days before the date on which the transfer or payment is scheduled to be made, we may follow it even though it will not be binding on us. If we receive the order at least three of our business days before the date on which the transfer or payment is scheduled to be made, we will be liable to the extent provided by applicable law for damages you suffer as a result of our failure to comply with the order, but we will be liable for actual damages only and not consequential or punitive damages if the failure was not intentional and resulted from a bona fide error despite our maintenance of procedures reasonably adapted to avoid the error. If the order is not in writing, we may require you to provide a written confirmation of the order to us so that we receive the written confirmation within 14 days after the date the order is given to us. In that case, the order will cease to be binding on us 14 days after the date it is given to us unless we receive the written confirmation during the 14 days. However, even if we do not receive the written confirmation during the 14 days, we may continue to follow the order even though it is no longer binding on us. The order may be limited to a single transfer or payment in the series, or it may apply to all future transfers or payments in the series. If it applies only to a single transfer or payment in the series, we may, but we will not have to, allow any other transfer or payment in the series. You will be liable in connection with the order for any fee applicable to the ordering of the stopping of a transfer of funds or payment from whichever of your deposit accounts is the account from which the transfer or payment is to be made.

**b. Stale Dated Check Issued to Pay Bill.** All checks issued pursuant to the bill pay feature will include the legend “**Not valid 90 days from issue**”. If a check issued to pay a bill pursuant to the bill pay feature is not presented for payment by the payee of the check within 90 days of the date of issuance of the check, we will: (i) stop payment on the check; (ii) return the check to the payee’s bank unpaid and; (iii) credit your account in the amount of the check. In such event, you: (i) will be responsible to make alternative payment arrangements with the payee if necessary; and (ii) hereby agree to indemnify and hold us harmless against any claims, demands, losses or expenses, including attorney fees, made by any third party, including but not limited to, the payee or a collecting bank, resulting from the return of the check as set forth above. In the event that at the time a check is returned you no longer maintain an account with us, we will issue you a check in the amount of the returned check.

- 11. Authorization and appointment as agent.** You authorize us and appoint us as your agent to take on your behalf any action we believe necessary or appropriate to implement any order described in Section 6 or 7 that is given through Evans Online Banking or to correct any error in crediting or charging any of your deposit accounts or any of your loan accounts in connection with any order described in Section 6 or 7 that is given through Evans Online Banking. For example, you authorize us and appoint us as your agent to on your behalf:
- a. Withdraw money from any of your deposit accounts and deposit the money in any other of your deposit accounts in order to implement any order to make a transfer of funds from the first deposit account to the other deposit account given through the Evans Online Banking feature of Evans Online Banking;
  - b. Withdraw money from any of your deposit accounts and use the money to make a payment under any of your loan accounts in order to implement any order to make a transfer of funds from the deposit account to the loan account given through the Evans Online Banking feature;

- c. Obtain credit under any of your line of credit accounts and deposit the proceeds of the credit in any of your deposit accounts in order to implement any order to make a transfer of funds from the line of credit account to the deposit account given through the Evans Online Banking feature;
  - d. Obtain credit under any of your line of credit accounts and use the proceeds of the credit to make a payment under any other of your loan accounts in order to implement any order to make a transfer of funds from the line of credit account to the other loan account given through the Evans Online Banking feature; and
  - e. Withdraw money from your primary account in order to implement any order to make a payment from your primary account given through the bill payment feature of Evans Online Banking. Our withdrawal of money from any of your deposit accounts or our obtaining of credit under any of your line of credit accounts under the authority given and the appointment as your agent made in the first sentence of this section will be as effective as though you had signed a check or withdrawal form to make the withdrawal or to obtain the credit. In addition, you authorize the processor and appoint it as your agent to take on your behalf any action it believes necessary or appropriate to implement any order described in Section 7 that is given through the bill payment feature. For example, you authorize the processor and appoint it as your agent to direct us on your behalf to withdraw funds from your primary account in order to implement any order to make a payment from your primary account given through the bill payment feature.
12. **Fees.** You must pay us each fee we impose for the use of Evans Online Banking or any feature of Evans Online Banking, which will be in addition to the fees applicable to any of your deposit accounts or any other deposit account you have with us now or in the future. We may charge the fee against any of your deposit accounts or any other deposit account you have with us now or in the future.
13. **Confirmation number.** Upon our confirming any order to make a transfer of funds or payment given through Evans Online Banking, we will provide to you through Evans Online Banking a confirmation number for the order. The confirmation number, together with information contained in the order (for example, the amount of the transfer or payment, the date the transfer or payment is scheduled to be made and the account or payee to which the transfer or payment is to be made) will be useful in resolving any problem with the transfer or payment that may occur.
14. **Statements.** Approximately once a month, we will send you or otherwise make available to you a statement for each of your deposit accounts that is a demand deposit or NOW account. Approximately once a month, we will either send you or otherwise make available to you a statement for each of your deposit accounts that is not a demand deposit, NOW or club account or review it and send you or otherwise make available to you a statement for it if any transaction has been credited to or charged against it since we last reviewed it. But in any event, we will send you or otherwise make available to you a statement for it approximately once a quarter unless it is a club account. Any statement for any of your deposit accounts that we send you or otherwise make available to you will show all transactions credited to or charged against the account during the period covered by the statement.
15. **Business days.** Our business days are Monday through Friday, excluding legal holidays.



16. **Notice of loss, theft, unauthorized use or error.** If you believe that your password has been lost or stolen, that any transaction involving any of your deposit accounts may have been or may be made without your authorization or that we may have made an error with respect to any of your deposit accounts, you must contact an Evans Customer Experience Expert at once by telephoning 716-926-3313 and asking for our Customer Experience Center or writing Evans Bank, N.A., One Grimsby Drive, Hamburg, NY 14075, Attention: Evans Support Specialist.
17. **Your liability for unauthorized use.** You may have to bear the loss of money taken from any of your deposit accounts in any transfer of funds, payment or series of related transfers of funds, payments or transfers of funds and payments ordered through Evans Online Banking by an order or orders initiated by the use of your password without your authorization. How much of the loss you will have to bear will depend on when we are notified that your password has been lost or stolen or that there are circumstances indicating that a transfer of funds or payment involving any of your deposit accounts ordered through Evans Online Banking has been or may be initiated by the use of your password without your authorization. If we are notified within two of our business days after the date you learn of the loss, theft or possible unauthorized transfer or payment, you will have to bear (subject to limitations under federal law) as much as \$50 of the loss. If we are not notified within those two business days and we can show that we could have stopped the taking of the money had we been notified during those two business days, you will have to bear (subject to limitations under federal law) as much as \$500 of the loss. In addition to any loss you must bear under the two preceding sentences, if any statement for any of your deposit accounts that we send you or otherwise make available to you shows any transfer of funds or payment involving any of your deposit accounts ordered through Evans Online Banking by an order initiated by the use of your password without your authorization, we are not notified of the unauthorized transfer or payment within 60 days after the date we send you the statement or otherwise make it available to you and we can show that we could have stopped the taking of the money had we been notified of the unauthorized transfer or payment during those 60 days, you will have to bear (subject to limitations under federal law) all of the loss occurring after the end of those 60 days and before we are notified of the unauthorized transfer or payment. For a good reason (such as a long trip or hospital stay by you), we will extend the periods of two of our business days and 60 days referred to in this section for a reasonable time.
18. **Our liability for failure to make transfers of funds and payments.** With exceptions, we will be liable to the extent provided by applicable law for damages you suffer as a result of our failure to make, on time and in the correct amount, any transfer of funds or payment to or from any of your deposit accounts ordered by a timely and properly initiated order to make the transfer or payment given through Evans Online Banking. Whether the order is timely will be determined under Section 9 and, if the order is to make a payment, paragraph b. of Section 10. The order will not be properly initiated unless:
- a. The computer, related equipment and software you use for Evans Online Banking and each telephone, internet access and other service you use to connect to Evans Online Banking are properly functioning;
  - b. The instructions on how to give the order are properly followed;
  - c. The order is described in Section 6, 7 or 8 and is correct and complete (for example, if the order is to make a payment, the order includes the correct name and address of the payee of the payment, the correct account number of the

- account to which the payment is to be made and the correct amount of the payment); and
- d. The transfer or payment would not be subject to any limitation referred to in Section 10.

Examples of exceptions to our liability are as follows:

- a. We do not receive the order;
- b. Before the order is to be charged against the account from which the transfer or payment is to be made, your right to use Evans Online Banking or the feature of Evans Online Banking involved in the transfer or payment is canceled;
- c. When the order is processed or is to be charged against the account from which the transfer or payment is to be made, we in good faith believe that the order was given without your authorization (for example, because your password has been reported as lost or stolen) or is fraudulent;
- d. The order is to make a transfer of funds and, before the order is to be charged against the account from which the transfer is to be made, either that account or the account to which the transfer is to be made is closed;
- e. The order is to make a payment and we do not receive the order in time to allow us to make the payment and allow the payee of the payment to properly credit it by the date on which it is to become due, we make the payment in time to allow the payee to properly credit it by the date on which it is to become due but the payee fails to do so or before the order is to be charged against your primary account, your primary account is closed;
- f. The order is to make a transfer of funds or payment from a deposit account and through no fault of ours, when the order is processed or is to be charged against the account, the amount of the transfer or payment exceeds the amount of money available for withdrawal from the account (taking into consideration, if the account is tied to a line of credit account or other overdraft facility with us, the amount of credit available under the line of credit account or other overdraft facility);
- g. The order is to make a transfer of funds from a line of credit account and through no fault of ours, when we process the order or when the order is to be charged against the account, the amount of the transfer exceeds the amount of credit available under the account;
- h. When the order is processed or is to be charged against the account from which the transfer or payment is to be made, money in the account is subject to any legal process (for example, a tax levy, a subpoena or an order providing for restraint, attachment, garnishment or execution) or administrative hold restricting its removal from the account, is collateral for a loan or other extension of credit or is the subject of a dispute or legal proceeding;
- i. When the order is given, Evans Online Banking or the feature of Evans Online Banking involved in the transfer or payment is unavailable because maintenance work is being performed on it;
- j. We are prevented from making the transfer or payment by a technical malfunction and when the order is given, the individual giving it knows that Evans Online Banking or the feature of Evans Online Banking involved in the transfer or payment is not functioning properly;
- k. An occurrence beyond our control (for example, a fire, flood, failure or malfunction of equipment or delay or loss of mail by the postal service) prevents us from making the transfer or payment despite our exercise of reasonable care

to prevent the occurrence and our exercise of diligence to make the transfer or payment despite the occurrence; and

- I. Our failure to make the transfer or payment is justified by any provision of this agreement, by any provision of any other agreement between you and us concerning any of your deposit accounts, any of your loan accounts, any line of credit account or other overdraft facility with us to which any of your deposit accounts is tied or transfers of funds or payments to or from any of your deposit accounts, any of your loan accounts or the line of credit account or other overdraft facility or by applicable law.

If we are liable for damages you suffer as a result of our failure to make the transfer or payment on time and in the correct amount, we will be liable for actual damages only and not consequential or punitive damages if the failure was not intentional and resulted from a bona fide error despite our maintenance of procedures reasonably adapted to avoid the error.

19. **Disclosure.** In the regular course of our business but not to the extent prohibited by applicable law, we will disclose information concerning any of your deposit accounts or any transaction involving the account:

- a. In any receipt issued in connection with the transaction;
- b. As necessary to complete the transaction or to resolve any error or dispute concerning the transaction;
- c. In any statement for the account that we send or otherwise make available;
- d. To someone in whose name the account is open;
- e. In accordance with the written permission of someone in whose name the account is open;
- f. To verify the existence and condition of the account or to report our experience concerning the account to a third party such as another financial institution, a credit reporting agency or a merchant;
- g. To any affiliate of ours for the purpose of offering or providing another product or service to you;
- h. To any agent, contractor or vendor of ours for the purpose of providing any service to us in the regular course of our business or completing marketing activities of ours (for example, the processor or any other party providing any service to us in connection with Evans Online Banking); and
- i. To comply with applicable law, any order of any court or any order or request of any other governmental body.

20. **Cancellation.** You may cancel your right to use Evans Online Banking or any feature of Evans Online Banking at any time by notifying us in writing or by electronic mail sent to us through Evans Online Banking. The cancellation will not take effect until we receive the notice and have a reasonable time to act on it. At any time, for any reason and without any notice to you, we may cancel your right to use Evans Online Banking or any feature of Evans Online Banking. The cancellation will take effect immediately unless we decide to have it take effect later. Once the cancellation by you or us of your right to use Evans Online Banking or any feature of Evans Online Banking takes effect, we may, but we will not have to, process any order described in Section 6, 7 or 8 that is given through Evans Online Banking before the cancellation takes effect and would involve the use of a feature of Evans Online Banking that your right to use has been canceled. The cancellation by you or us of your right to use Evans Online Banking or any feature of Evans Online Banking will not affect any of your obligations under this agreement.

21. **Electronic mail.** We will not have to take any action based on any message sent to us by electronic mail (for example, electronic mail sent to us through Evans Online Banking) until we receive and have a reasonable time to act on the message. Electronic mail (for example, electronic mail sent to us through Evans Online Banking) must not be used to communicate to us information that is urgent or requires a prompt response or prompt action (for example, a report of a lost or stolen card or a report of an unauthorized transaction involving a deposit account or line of credit account).
22. **Recording and obtaining of information.** You consent to the recording by the processor, any other party providing any service to us in connection with Evans Online Banking or us of any information, notice, order or other communication sent through Evans Online Banking or by electronic mail (for example, electronic mail sent to us through Evans Online Banking). In addition you consent to the obtaining by the processor or us from the payee of any payment that is ordered through the bill payment feature of Evans Online Banking of any information that the processor considers or we consider necessary or appropriate to complete the payment or to resolve any error concerning the payment.
23. **Reasonable time to act.** A reasonable time for us to act on any information, notice, order or other communication or document received by us (for example, electronic mail sent to us through Evans Online Banking) will not end until at least the close of business on our first business day after our business day we receive the information, notice, order or other communication or document.
24. **Notices and change of address.** Any notice or other communication or document concerning this agreement or Evans Online Banking we send you may be sent in any way not prohibited by applicable law (for example, through Evans Online Banking or by electronic mail). If sent by mail, the notice or other communication or document will be sent to your current mailing address shown in our records concerning Evans Online Banking and may be sent by regular mail. If your mailing address or electronic mail address changes, you must promptly notify us of the new address in writing or by electronic mail sent to us through Evans Online Banking. Except as otherwise provided in this agreement or by applicable law:
  - a. Any notice or other communication or document concerning this agreement or Evans Online Banking we send you will take effect when we send it; and
  - b. Any notice or other communication or document concerning this agreement or Evans Online Banking you send us must be in writing and sent by mail or courier or by electronic mail sent to us through Evans Online Banking and will not take effect until we receive it and have a reasonable time to act on it.
25. **Changes in agreement.** No change in this agreement may be made except as provided in this section. We may change this agreement at any time. We will send you any notice of the change that applicable law requires us to send you. If applicable law does not require us to send you any notice of the change, we will either send you a notice of it or post a notice of it on evansbank.com unless we consider it to be for reasons of security.
26. **Changes in Evans Online Banking.** We may change Evans Online Banking at any time by adding, deleting or changing any feature of Evans Online Banking. We will send you any notice of the change that applicable law requires us to send you. If applicable law does not require us to send you any notice of the change, we will either send you a notice of it or post a notice of it on evansbank.com. By using any added or changed feature of Evans Online Banking, you will be agreeing to be bound by all our requirements concerning the added or changed feature.

27. **Changes in fees.** We may at any time establish a new fee or change an existing fee you must pay for the use of Evans Online Banking or any feature of Evans Online Banking. If we establish a new fee or increase an existing fee you must pay for the use of Evans Online Banking or any feature of Evans Online Banking, we will send you any notice of the new fee or increase that applicable law requires us to send you. If applicable law does not require us to send you any notice of the new fee or increase, we will either send you a notice of it or post a notice of it on our World Wide Web site. We will not have to notify you if we decrease or eliminate an existing fee for the use of Evans Online Banking or any feature of Evans Online Banking.
28. **No notice or loss of rights.** We may exercise, give up, fail to exercise or delay exercising any of our rights with respect to you or Evans Online Banking without any notice to you. By exercising, failing to exercise or delaying the exercise of any of the rights, we will not lose it or any other of the rights. By giving up any of the rights on any occasion, we will not lose it on any other occasion or lose any other of the rights.
29. **Giving up of rights.** None of our rights with respect to you or Evans Online Banking can be given up by us except in a writing signed by us.
30. **No transfer of rights and obligations.** You may not transfer any of your rights and obligations under this agreement or with respect to Evans Online Banking to anyone else. Any transfer of any of the rights and obligations will be void.
31. **Conflicts.** If any part of this agreement conflicts with applicable law, the law will control, and this agreement will be considered changed to the extent necessary to comply with the law.
32. **Continued effectiveness.** If any part of this agreement is determined by a court to be invalid, the rest of this agreement will remain in effect.
33. **What law applies.** Any legal question concerning this agreement or Evans Online Banking will be decided in accordance with New York State law without regard to the law of any other state and in accordance with, to the extent applicable, federal law.
34. **Entire agreement.** Except for any agreement between you and us concerning any of your deposit accounts, any of your loan accounts, any line of credit account or other overdraft facility with us to which any of your deposit accounts is tied or transfers of funds or payments to or from any of your deposit accounts, any of your loan accounts or the line of credit account or other overdraft facility, this agreement is the final and complete agreement between you and us concerning Evans Online Banking. If any part of any agreement described in the preceding sentence is incompatible with any part of this agreement, the part of this agreement will control. Any statement concerning Evans Online Banking made by any of our employees or anyone else is not part of this agreement. This agreement replaces any other agreement now existing between you and us concerning Evans Online Banking.
35. **Agreement.** By registering with us to use Evans Online Banking, using Evans Online Banking in any way described in Section 6 or 7 or allowing anyone else to have your password or to use Evans Online Banking in any way described in Section 6 or 7, you agree to be bound by all provisions of this agreement, all our requirements concerning Evans Online Banking or any feature of Evans Online Banking and all legal terms and conditions contained on our World Wide Web site.

The following information applies to your deposit accounts, while the agreements concerning your line of credit accounts have similar information applicable to your line of credit accounts.

**In Case of Errors or Questions About Your Electronic Transfers**

Telephone us at 716-926-3313 and  
ask for our Customer Experience Center

or

Write us at Evans Bank, N.A.,  
One Grimsby Drive,  
Hamburg, NY 14075,

Attention: Customer Experience Center,

as soon as you can, if you think that your statement is wrong or if you need more information about a transfer listed on the statement. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

(1) Tell us your name and account number.

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within ten business days.

We will determine whether an error occurred within ten business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within ten business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within ten business days, we may not credit your account.

For errors involving new accounts, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

**COMMERCIAL BANKING RIDER TO  
EVANS ONLINE BANKING AGREEMENT  
Evans Bank, N.A.**

If a corporation, partnership, limited liability company or other organization registers with Evans Bank, N.A. to use Evans Online Banking or an individual registers with Evans Bank, N.A. to use

Evans Online Banking but none of the deposit accounts with Evans Bank, N.A. that are approved by Evans Bank, N.A. as accessible by that individual for transfers of funds or payments through Evans Online Banking is established primarily for personal, family or household purposes:

1. Clause b. of Section 1 of the agreement is changed to read as follows:
  - b. "You" and "your" mean any corporation, partnership, limited liability company or other organization that registers with us to use Evans Online Banking or any individual who registers with us to use Evans Online Banking if none of the deposit accounts with us that are approved by us as accessible by that individual for transfers of funds or payments through Evans Online Banking is established primarily for personal, family or household purposes;
2. Clause d. of Section 1 of the agreement is changed to read as follows:
  - d. "Your primary account" means, if you enroll in the bill payment feature or cash management feature of Evans Online Banking, whichever of your deposit accounts is approved by us as the demand deposit or NOW account to be used with the bill payment feature or cash management feature;
3. Section 3 of the agreement is changed as follows:
  - a. The second, third, fourth and fifth sentences of the first paragraph of the section are changed to read as follows:
    - We will assign a temporary password to you for use with Ease-E Net Online Banking, but you or any individual acting on your behalf in connection with Evans Online Banking will be required to choose a new password for use with Evans Online Banking. Neither you nor any individual acting on your behalf in connection with Evans Online Banking should choose as the new password any personal identification number for any electronic banking card that can be used to obtain access to any deposit account you have or that individual has with us now or in the future. Neither you nor any individual acting on your behalf in connection with Evans Online Banking should allow anyone else to have your password unless you authorize him or her to use Evans Online Banking in any way described in Section 6, 7 or 8. You and each individual acting on your behalf in connection with Evans Online Banking should keep your password confidential and in a secure location separate from the computer, related equipment and software you use for Evans Online Banking.
  - b. The second paragraph of the section is changed to read as follows:
    - We will not be liable for damages you suffer as a result of your allowing, or any individual acting on your behalf in connection with Evans Online Banking allowing, anyone else (for example, a party that aggregates account information or content of websites) to have your password.
4. Section 4 of the agreement is changed to read as follows:
  - **4. Your responsibility for orders.** You will be responsible for and bound by each order described in Section 6, 7 or 8 that is given through Evans Online Banking by any individual acting on your behalf in connection with Evans Online Banking or anyone else you allow, or any individual acting on your behalf in connection with Evans Online Banking allows, to have your password or to use Evans Online Banking in any way described in Section 6, 7 or 8, and the order and each transfer of funds or payment initiated by the order will be covered by this agreement as though the order had been given by you.

5. Section 5 of the agreement is changed to read as follows:
  - **5. Features of Evans Online Banking.** Evans Online Banking has three features: an Evans Online Banking feature, a bill payment feature and a cash management services feature.
  
6. There is added to the agreement a new Section 5 A reading as follows:
  - **Cash management services feature.** Subject to the provisions of this agreement, the cash management services feature of Evans Online Banking may be used to:
    - a. Give an order to us to make a future non-recurring transfer of funds from your primary account to a deposit account maintained by someone other than you with us or by you or someone other than you with another financial institution;
    - b. Give an order to us to make a future non-recurring transfer of funds to your primary account from a deposit account maintained by someone other than you with us or by you or someone other than you with another financial institution;
    - c. Give an order to us to make a series of recurring transfers of funds of the same amount from your primary account to a deposit account maintained by someone other than you with us or by you or someone other than you with another financial institution;
    - d. Give an order to us to make a series of recurring transfers of funds of the same amount to your primary account from a deposit account maintained by someone other than you with us or by you or someone other than you with another financial institution;
    - e. Give an order to us changing or canceling an order described in clause (a) or (b) of this sentence that was previously given through the cash management services feature;
    - f. Give an order to us changing or canceling as to future transfers of funds an order described in clause (c) or (d) of this sentence that was previously given through the cash management services feature; and
    - g. Request information available through the cash management services feature concerning any deposit account with us that is approved by us as accessible by you for information through the cash management services feature (for example, information concerning deposits in and withdrawals from a deposit account and the balance of the deposit account).

Any transfer of funds from your primary account to a deposit account at another financial institution made through the cash management services feature will be made, depending on the method chosen when the order to make the transfer is given, by an electronic transfer of funds through an automated clearing house (ACH) or by a wire transfer of funds from your primary account to the other deposit account, and a transfer of funds from a deposit account at another financial institution to your primary account made through the cash management services feature will be made by an electronic transfer of funds through an automated clearing house from the other deposit account to your primary account.

7. Section 8 of the agreement is changed as follows:
  - a. The introductory language of paragraph b. of the section is changed to read as follows:
    - b. If an order to make a future non-recurring transfer of funds is given through the Evans Online Banking feature or cash management services feature of Evans Online Banking:



- b. Clause iv. of paragraph b. of the section is changed to read as follows:
    - iv. Unless the order is subject to an agreement between you and us governing the change or cancellation of transfers of funds through an automated clearing house or by a wire transfer of funds, the order may be changed or canceled until 7:00 a.m. eastern United States time on the date on which the transfer is scheduled to be made.
  - c. The introductory language of paragraph c. of the section is changed to read as follows:
    - c. If an order to make a series of recurring transfers of funds is given through the Evans Online Banking feature or cash management services feature:
  - d. Clause iv. of paragraph c. of the section is changed to read as follows:
    - iv. Unless the order is subject to an agreement between you and us governing the change or cancellation of transfers of funds through an automated clearing house or by a wire transfer of funds, the order may be changed or canceled with respect to any of the transfers until the time the actual payment or transfer is made, which occurs at various times throughout the day.
  - e. Clause i. of paragraph d. of the section is changed to read as follows:
    - i. The order must provide as the payee of the payment a party that is located in the United States, is not a government entity except in the case of a tax payment to the federal government, would not be receiving the payment under a court order and is not regarded by us as ineligible for payment through the bill payment feature;
8. Paragraph i. of Section 9 of the agreement is deleted.
9. There is added to the agreement a new Section 10A reading as follows:
  - **10 A. Security procedure.** We may, but we will not have to, request you to try to reach an agreement with us on a security procedure to verify that any order described in Section 6 or 7 that is given through Evans Online Banking has been given by you or on your behalf. If we do so, you must try to reach an agreement with us on a security procedure for that purpose. If you cannot reach an agreement with us on a security procedure for that purpose and we offer to you a security procedure for that purpose that is commercially reasonable for you, you must choose a security procedure for that purpose and acknowledge to us in writing that the security procedure chosen by you for that purpose was chosen by you after you refused the security procedure offered to you by us for that purpose. We may, but we will not have to, agree with you on a security procedure to detect any error in the transmission or content of any order described in Section 6 or 7 that is given through Evans Online Banking. You and each individual acting on your behalf in connection with Evans Online Banking must keep confidential all information relating to any security procedure described in this section, not reveal any of the information to anyone not authorized to use Evans Online Banking in any way described in Section 6 or 7 and notify us of any unauthorized disclosure or use of any of the information. We may, but we will not have to, monitor the use of any security procedure described in this section and report any possible breach of the security procedure to you.
10. The second sentence of Section 11 of the agreement is changed to read as follows:
  - For example, you authorize us and appoint us as your agent to on your behalf:
    - a. Withdraw money from any of your deposit accounts and deposit the money in any other of your deposit accounts in order to implement any order to make a

transfer of funds from the first deposit account to the other deposit account given through the Evans Online Banking feature of Evans Online Banking;

- b. Withdraw money from any of your deposit accounts and use the money to make a payment under any of your loan accounts in order to implement any order to make a transfer of funds from the deposit account to the loan account given through the Evans Online Banking feature;
  - c. Obtain credit under any of your line of credit accounts and deposit the proceeds of the credit in any of your deposit accounts in order to implement any order to make a transfer of funds from the line of credit account to the deposit account given through the Evans Online Banking feature;
  - d. Obtain credit under any of your line of credit accounts and use the proceeds of the credit to make a payment under any other of your loan accounts in order to implement any order to make a transfer of funds from the line of credit account to the other loan account given through the Evans Online Banking feature;
  - e. Withdraw money from your primary account in order to implement any order to make a payment from your primary account given through the bill payment feature of Evans Online Banking;
  - f. Withdraw money from your primary account and direct that the money be deposited in an account maintained by someone other than you with us or by you or someone other than you with another financial institution in order to implement any order to make a transfer of funds from your primary account to the other deposit account given through the cash management services feature of Evans Online Banking; and
  - g. Direct that money be withdrawn from a deposit account maintained by someone other than you with us or by you or someone other than you with another financial institution and deposit the money in your primary account in order to implement any order to make a transfer of funds from the other deposit account to your primary account given through the cash management services feature.
11. The second paragraph of Section 12 of the agreement is deleted.
12. There is added to the agreement a new Section 12A reading as follows:
- 12A. Indemnification. You must indemnify us against each liability, cost and expense (for example, if we hire an attorney for advice, litigation or any other purpose, reasonable attorneys' fees and disbursements) imposed on, incurred by or asserted against us as a direct or indirect result of our accepting or following any order described in Section 6, 7, or 10 that is given through Evans Online Banking or our acting on any information, notice, order or other communication or document we receive from you or any individual acting on your behalf in connection with Evans Online Banking.
13. Section 13 of the agreement are deleted.
14. Section 16 of the agreement is changed to read as follows:
- **16. Notice of loss, theft, unauthorized use or error.** If you believe, or any individual acting on your behalf in connection with Evans Online Banking believes, that your password has been lost or stolen, that any transaction involving any of your deposit accounts may have been or may be made without your authorization or that we may have made an error with respect to any of your deposit accounts, you or that individual must contact our Evans Support Specialist at once by telephoning 716-926-3313 and asking for our Evans Support Specialist or writing Evans Bank, N.A., One Grimsby Drive, Hamburg, NY 14075. If any statement for any of your deposit accounts that we send you

or otherwise make available to you indicates that a transaction involving the account may have been made without your authorization during the period covered by the statement or that we may have made an error with respect to the account during that period, you will lose any right to make any claim against us based on the transaction or error unless you notify us in writing of the transaction or error within 14 days after the date we send you the statement or otherwise make it available to you.

15. Section 17 of the agreement is changed to read as follows:

• **17. Your liability for unauthorized use.** How much you will have to bear of any loss of money taken from any of your deposit accounts in any transfer of funds or payment ordered through Evans Online Banking by an order initiated by the use of your password without your authorization will be determined by applicable law and any agreement between you and us concerning the account or transfers of funds or payments from the account (for example, an agreement between you and us governing transfers of funds through an automated clearing house or by a wire transfer of funds), but:

- a. In no event will we be liable to you for any loss of money taken from the account in any transfer of funds or payment ordered through Evans Online Banking by an order initiated by the use of your password without your authorization by any individual acting on your behalf in connection with Evans Online Banking or anyone else you allow, or any individual acting on your behalf in connection with Evans Online Banking allows, to have your password;
- b. In no event will we be liable to you for any loss of money taken from the account in any transfer of funds or payment ordered through Evans Online Banking by an order initiated by the use of your password without your authorization unless we fail to exercise ordinary care in processing the transfer or payment; and
- c. In the case of any loss of money taken from the account in any transfer of funds or payment ordered through Evans Online Banking by an order initiated by the use of your password without your authorization, our liability will be limited to the amount of the transfer or payment less any amount that, even with our exercise of ordinary care, would have been lost.

16. Section 18 of the agreement is changed as follows:

- a. The first sentence of the section is changed to read as follows:
  - Our liability for damages you suffer as a result of our failure to make, on time and in the correct amount, any transfer of funds or payment to or from any of your deposit accounts ordered by a timely and properly initiated order to make the transfer or payment given through Evans Online Banking will be determined by applicable law and any agreement between you and us concerning the account or transfers of funds or payments to or from the account (for example, an agreement between you and us governing transfers of funds through an automated clearing house or by a wire transfer of funds), but in no event will we be liable to you for any damages (for example, consequential or punitive damages) in addition to actual damages.
- b. In the fourth sentence of the section, the words "Examples of exceptions to our liability are as follows" are replaced with the words "Without limiting the first sentence of this section, in no event will we be liable to you if any of the following things happens".
- c. Clause I. of the fourth sentence of the section is changed to read as follows:
  - I. Our failure to make the transfer or payment is justified by any provision of this agreement, by any provision of any other agreement between you and us concerning any of your deposit accounts, any of your loan accounts, any line of

credit account or other overdraft facility with us to which any of your deposit accounts is tied or transfers of funds or payments to or from any of your deposit accounts (for example, an agreement between you and us governing transfers of funds through an automated clearing house or by a wire transfer of funds), any of your loan accounts or the line of credit account or other overdraft facility, by any security procedure described in Section 11A or by applicable law.

- d. The last sentence of the section is deleted.
17. There is added to the agreement a new Section 18A reading as follows:
    - **18A. Our liability for failure to comply with stop payment order.** Our liability for damages you suffer as a result of our failure to comply with any order to stop any transfer of funds or payment ordered through Evans Online Banking that you have a right to stop under applicable law will be determined by applicable law and any agreement between you and us concerning the account from which the transfer or payment is to be made, but in no event will we be liable to you for any damages (for example, consequential or punitive damages) in addition to actual damages.
  18. Section 19 of the agreement is deleted.
  19. The last sentence of Section 26 of the agreement is changed to read as follows:
    - By the use of any added or changed feature of Evans Online Banking by you, any individual acting on your behalf in connection with Evans Online Banking or anyone else you allow, or any individual acting on your behalf in connection with Evans Online Banking allows, to have your password or to use Evans Online Banking in any way described in Section 6 or 7, you will be agreeing to be bound by all our requirements concerning the added or changed feature.
  20. The first sentence of Section 34 of the agreement is changed to read as follows:
    - Except for any agreement between you and us concerning any of your deposit accounts, any of your loan accounts, any line of credit account or other overdraft facility with us to which any of your deposit accounts is tied, transfers of funds or payments to or from any of your deposit accounts (for example, an agreement between you and us governing transfers of funds through an automated clearing house or by a wire transfer of funds), any of your loan accounts or the line of credit account or other overdraft facility or any security procedure described in Section 11A, this agreement is the final and complete agreement between you and us concerning Evans Online Banking.
  21. Section 35 of the agreement is changed by adding at the end of the section the following sentence:
    - Also, if any individual acting on your behalf in connection with Evans Online Banking uses Evans Online Banking in any way described in Section 6 or 7 or allows anyone else to have your password or to use Evans Online Banking in any way described in Section 6 or 7, you agree to be bound by all those provisions, requirements and legal terms and conditions.
  22. The information at the end of the agreement entitled "In Case of Errors or Questions About Your Electronic Transfers" is deleted.